APPENDIX A

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA BOARD
OF DENTAL EXAMINERS,
and
EDWARD J. JOSEPH,
J. J. HERLIHY,
WILLIAM I. BAKER,
A. BROOKS DRAKE,
and LAWRENCE FANTI,
Members of the West Virginia
Board of Dental Examiners,
Plaintiffs

VS : : : IN CHANCERY NO. 740

HARRY C. DEVORE,
Defendant

PETITION

TO THE HONORABLES, THE JUDGES OF THE SUPREME COURT OF APPEALS:

Your petitioner, Harry C. Devore, would respectfully represent unto this Honorable Court that he is aggrieved by a final order made and entered on the 23rd day of September, 1966, by the Circuit Court of Cabell County, West Virginia.

Such portion of the original record as will adequately present the errors complained of, properly

certified, is herewith presented and therefrom it will appear that the case is as follows:

Action and Proceedings

On August 4, 1958, the plaintiffs, West Virginia Board of Dental Examiners and the predecessor members of said board filed their amended and supplemental bill of complaint in the Circuit Court of Cabell County, West Virginia, after a previous bill of complaint had been held insufficient on demurrer by said Court, wherein, after recitation of jurisdictional facts and powers and duties of the plaintiffs, together with allegations of purported misconduct of the defendant under certain acts of the West Virginia Legislature therein cited, plaintiffs prayed for a temporary and permanent injunction enjoining, restraining and inhibiting your petitioner "from doing any acts constituting the practice of dentistry or of dental hygiene within the State of West Virginia without prior licensing by the West Virginia Board of Dental Examiners xxxxx". After hearing upon a companion case, which the parties, by counsel, agreed would control the present case the Circuit Court of Cabell County on the 6th day of October, 1958, caused to be entered an order perpetually enjoining your petitioner "from doing any act or acts, directly or indirectly, within the State of West Virginia constituting the practice of dentistry or the practice of dental hygiene as defined by statute without having first been licensed thereto by the West Virginia Board of Dental Examiners or a successor body."

On the 4th day of August, 1966, the successor board and its constituent members caused to be filed in the

Circuit Court of Cabell County, West Virginia, their petition alleging that the defendant refused entry and inspection of defendant's premises by a member of the dental board under Code, 30-4-4a which was amended by the Legislature by Chapter 108 of its Acts which added the following language:

> "The board, acting by and through its members, employees, and agents, is further authorized and empowered, at any time during customary office hours, to enter into the office or place of business of any dental laboratory, licensed dentist or other dental practitioner of this state, and to obtain access to, make inspection of, and request information regarding any work authorization which such dental laboratory, licensed dentist, or other dental practitioner is required under the provisions of section two-a of this article, to retain therein, and is further authorized and empowered to inspect any items of dental technological work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental prosthesis then in the place of business of, or upon the premises occupied by, such dental laboratory for making, production, reproduction, construction, repair, alteration, or restoration, and to request any information which it, its members, employees, or agents deem to be pertinent relating to any such dental technological work and any such dental prosthesis. For the purpose of this paragraph the definition of terms contained in subsection A of section two-a of this article is made expressly applicable."

The petition further alleged certain matters upon which no evidence was adduced or sought to be adduced, but on the contrary the Court permitted certain other

evidence to be introduced, at the conclusion of which the Court sustained defendant's counsel's motion to strike. However, in spite of the fact that no evidence whatsoever was introduced to show a violation of the injunction, the Court permitted an amendment to the 1958 order permitting inspection of your petitioner's premises in the language of the statute above quoted. It is of this arbitrary action of the lower court that your petitioner complains.

Errors Assigned

The Court erred in entering the final order complained of, dated the 23rd day of September, 1966, as being unconstitutional in its application.

WHEREFORE, your petitioner prays that he be awarded an appeal and supersedeas herein, and that this Court do review and reverse the final order of the Circuit Court of Cabell County and hold the same for naught.

Respectfully submitted,

/s/ H. G. Williamson,
J. J. N. Quinlan,
H. G. Williamson,
Attorneys for defendant
909 Fifth Avenue
Huntington, W. Va.

Certificate of Counsel

I, H. G. WILLIAMSON, an attorney practicing before this Honorable Court, do certify that, in my opinion, the action taken by the court below is prejudicially erroneous and that such action should be reviewed and reversed.

H. G. Williamson

APPENDIX B

ARTICLE 13.

UNIFORM DECLARATORY JUDGMENTS ACT.

Sec.

55-13-1. Power of courts to declare rights, status and other legal relations; objections; form and effect of declaration.

55-13-2. Who may have determination and obtain declaration.

55-13-3. Construction of contract before or after breach.

55-13-4. Declaration concerning trusts and estates.

55-13-5. No restriction on powers conferred by § 55-13-1.

55-13-6. When court may refuse judgment.

55-13-7. Review.

55-13-8. Further relief.

55-13-9. Trial and determination of issues of fact.

55-13-10. Costs.

55-13-11. Parties.

55-13-12. Article remedial; liberal construction and administration thereof.

55-13-13. "Person" defined.

55-13-14. Severability.

55-13-15. Interpretation and construction of article.

55-13-16. Citation of article.

§ 55-13-1. Power of courts to declare rights, status and other legal relations; objections; form and effect of declaration.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

§ 55-13-2. Who may have determination and obtain declaration.

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

§ 55-13-3. Construction of Contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

§ 55-13-4. Declaration concerning trust and estates.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary,

creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

§ 55-13-5. No restriction on powers conferred by § 55-13-1.

The enumeration in sections two, three, and four [§§ 55-13-2, 55-13-3 and 55-13-4] does not limit or restrict the exercise of the general powers conferred in section one [§ 55-13-1], in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

§ 55-13-6. When court may refuse judgment.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

§ 55-13-7. Review.

All orders, judgments and decrees under this article may be reviewed as other orders, judgments and decrees.

§ 55-13-8. Further relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

§ 55-13-9. Trial and determination of issues of fact.

When a proceeding under this article involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

§ 55-13-10. Costs.

In any proceeding under this article the court may make such award of costs as may seem equitable and just.

§ 55-13-11. Parties.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which

would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the State shall also be served with a copy of the proceeding and be entitled to be heard.

§ 55-13-12. Article remedial; liberal construction and administration thereof.

This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

§ 55-13-13. "Person" defined.

The word "person," wherever used in this article, shall be construed to mean any person, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

§ 55-13-14. Severability.

The several sections and provisions of this article, except sections one and two [§§ 55-13-1 and 55-13-2], are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the article invalid or inoperative.

§ 55-13-15. Interpretation and construction of article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

§ 55-13-16. Citation of article.

This article may be cited as the "Uniform Declaratory Judgments Act."

APPENDIX C

IN THE CIRCUIT COURT OF CABELL COUNTY,
WEST VIRGINIA

WEST VIRGINIA BOARD OF DENTAL EXAMINERS and EDWARD J. JOSEPH, J. J. HERLIHY, WILLIAM I. BAKER, A. BROOKS DRAKE and LAWRENCE FANTI, MEMBERS OF WEST VIRGINIA BOARD OF DENTAL EXAMINERS,

Plaintiffs,

vs. IN CHANCERY

HARRY C. DEVORE,

Defendant.

PETITION AND MOTION ON BEHALF OF PLAINTIFFS

WHEREAS, by order dated the 6th day of October, 1958, this Court perpetually enjoined the defendant herein, Harry C. Devore, from doing any act or acts, directly or indirectly, within the State of West Virginia constituting the practice of dentistry or dental hygiene as defined by statute without first having been licensed therefor by the West Virginia Board of Dental Examiners, and

WHEREAS, said defendant, Harry C. Devore, since the issuance of said order has not obtained a license to practice either dentistry or dental hygiene in this State, and

WHEREAS, the plaintiffs herein, upon information and knowledge and verily believing that said Harry C. Devore was operating a dental laboratory and otherwise engaging in the practice of dentistry, did through a duly appointed member of the West Virginia Board of Dental Examiners, to-wit: Dr. Robert M. Wild of Huntington, West Virginia, on the ____ day of July, 1966, attempt to inspect the offices of said Harry C. Devore, located at or near Ona, in Cabell County, West Virginia, pursuant to the authority of Chapter 30, Article 4, Section 4a, of the Code of West Virginia, which provides, in part, that:

> "The board, acting by and through its members, employees, and agents, is further authorized and empowered, at any time during customary office hours, to enter into the office or place of business of any dental laboratory, licensed dentist or other dental practitioner of this state, and to obtain access to, make inspection of, and request information regarding any work authorization which such dental laboratory, licensed dentist, or other dental practitioner is required under the provisions of section two-a of this article, to retain therein, and is further authorized and empowered to inspect any items of dental technological work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental prosthesis then in the place of business of, or upon the premises occupied by, such dental laboratory for making, production, reproduction, construction, repair, alteration, or restoration, and to request any information which it, its members, employees, or agents deem to be pertinent relating to any such dental technological work and any such dental prosthesis. For the purpose of this paragraph the

definition of terms contained in subsection A of section two-a of this article is made expressly applicable."

and that said Harry C. Devore did wrongfully and illegally refuse to permit said inspection of his premises as authorized by law, and

WHEREAS, Eugene W. Miller, an employee of the West Virginia State Tax Commissioner, pursuant to his duties, did enter upon the premises of said Harry C. Devore, located at or near Ona, Cabell County, West Virginia, and said Harry C. Devore did freely and voluntarily divulge unto said Eugene W. Miller, information and facts which clearly show that said Harry C. Devore is violating the provisions of said injunction order, but that said Eugene W. Miller is by statute precluded from divulging said information except under judicial order.

WHEREFORE, the petitioners herein do hereby petition and move the Court as follows:

1. To issue an order directing the defendant herein, Harry C. Devore, to allow any person as hereinabove authorized to inspect his premises and place of business herein described.

2. To modify the injunction order heretofore issued by this Court by adding thereto the following:

> "*It is further adjudged, ordered and decreed* that the defendant Harry C. Devore, shall at all reasonable times allow the West Virginia Board of dental Examiners, acting by and through its members, employees or agents, or any officer or person duly appointed by this

Court to enter upon and inspect any premises owned or operated by said Harry C. Devore, to the end that the Court shall be assured that its order is being complied with and in all other respects obeyed."

3. To issue a subpoena directed to said Eugene W. Miller compelling him to present himself to this Court at such time and place as the Court shall deem proper, to testify as to matters within his personal knowledge concerning the conduct of said Harry C. Devore.

WEST VIRGINIA BOARD OF DENTAL EXAMINERS, et al.
By Counsel

THOMAS B. YOST
Assistant Attorney General

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

Thomas B. Yost, a credible person, being duly sworn, says that he has read the foregoing petition and motion and that he knows the contents thereof, that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations, he believes them to be true.

Thomas B. Yost

Taken, sworn to and subscribed before me this _____ day of July, 1966, in my said County.

Notary Public in and for Kanawha County, West Virginia

My commission expires _____.

APPENDIX D

§ 62-1A-1. Search warrant—Who may issue.

A search warrant authorized by this article may be issued by a judge of a court having jurisdiction to try criminal cases in the county, or by a justice of the county, or by the mayor or judge of the police court of the municipality, wherein the property sought is located.

§ 62-1A-2. Same—Grounds for issuance; property defined.

A warrant may be issued under this article to search for and seize any property

(a) Stolen, embezzled or obtained by false pretenses; or

(b) Designed or intended for use or which is or has been used as a means of committing a criminal offense; or

(c) Manufactured, sold, kept, concealed, possessed, controlled, or designed or intended for use or which is or has been used, in violation of the criminal laws of this State heretofore or hereinafter enacted.

The term "property" shall include documents, books and papers and any other tangible objects.

§ 62-1A-3. Same—Issuance and contents.

A warrant shall issue only upon complaint on oath or affirmation supported by affidavit sworn to or affirmed before the judge or magistrate setting forth the facts establishing the grounds for issuing the warrant.

If the judge or magistrate is satisfied that there is probable cause to believe that grounds therefor exist, he shall issue a warrant identifying the property and particularly describing the place, or naming or particularly describing the person, to be searched. The warrant shall be directed to the sheriff or any deputy sheriff or constable of the county, to any member of the department of public safety or to any police officer of the municipality wherein the property sought is located, or to any other officer authorized by law to execute search warrants. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof: It shall command the officer to search forthwith the person or place named for the property specified, to seize such property and bring the same before the judge or magistrate issuing the warrant. Such warrant may be executed either in the day or night.

§ 62-1A-4. Same—Execution and return with inventory.

The warrant may be executed and returned only within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken; or if the person from whose premises the property is taken is not present at the time, the officer shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The judge or magistrate shall upon request deliver a copy of the inventory to the person

from whom or from whose premises the property was taken.

§ 62-1A-5. Breaking and entering premises.

The officer may break into a house, building or structure, or any part thereof, or anything therein, or any vehicle, vessel or other conveyance, to execute a search warrant, or commit such breaking as may be necessary to liberate himself or a person aiding him in the execution of the warrant. If the place to be searched is a dwelling he shall not attempt a forcible entry until he shall have given notice of his authority and purpose and shall have been refused admittance.

§ 62-1A-6. Motion for return of property and to suppress evidence.

A person aggrieved by an unlawful search and seizure may move for the return of the property and to suppress for use as evidence anything so seized on the ground that (1) the property was illegally seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. If the offense giving rise to the issuance of the warrant be one which a magistrate has jurisdiction to hear and determine, the motion may be made to him. If the offense is cognizable only before a court of record the motion shall be made to the court having jurisdiction. The judge or magistrate shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property

shall be returned unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion may be made before trial or hearing upon three days' notice, or, the motion may be made or renewed at the trial or hearing.

§ 62-1A-7. Disposition of seized property.

Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed or otherwise disposed of as the court or magistrate may direct.

§ 62-1A-8. Purpose of article; construction of other provisions dealing with search warrants; repeal of inconsistent laws.

It is intended that this article govern the issuance and execution of all search warrants, and no subsequent legislation shall be held to supersede or modify the provisions of this article except to the extent that such legislation shall do so specifically and expressly. It is recognized that throughout this Code there are many provisions dealing with the issuance and execution of search warrants, and it is not possible at this time to amend and reenact or to specifically repeal those provisions. Accordingly, all such provisions shall be construed so as to conform to and be consistent with the pertinent provisions of this article. In the event that there are provisions in this Code so inconsistent with the provisions of this article as to preclude such construction, such other provisions are hereby repealed to the extent of such inconsistency.

§ 62-1A-9. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.